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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/694,304

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David M. Allen

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EXAMINER

GILBERT, WILLIAM V

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

07/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/694,304	Applicant(s) ALLEN, DAVID M.	
	Examiner William V. Gilbert	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a Final Office Action. Claims 14 and 15 remain cancelled. Claims 1-13 and 16-18 are pending and examined below.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-11, 13, 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Trutwin (U.S. Patent No. 6,202,380) in view of Baum (U.S. Patent No. 1,585,960).

Claim 1: Trutwin discloses a baseboard that is installed (Col. 5, lines 35-45) in a region where a lower edge of a wall meets a floor comprising a base portion (Fig. 2: 17) having a back (21) and opposed front surfaces (20), lower (19) and upper ends (26) the back of the base is against the wall and the lower end adjacent the floor and a top portion (11) having back (15) and front surfaces (14), lower (13) and upper (12) ends, the back surface of the top portion is adjacent the wall and the base and top portions have dissimilar cross sections when taken perpendicular to the respective back surfaces. While Trutwin discloses that the juncture between the top and bottom portions have a general direction from the higher point to a lower point from the front to back surfaces (e.g. from portion 26 to portion 25), it does not disclose that the juncture is a slope from the front surface to the back surface. Baum discloses a baseboard (Fig. 2) that has a juncture (6) that slopes from the front surface to the back surface. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of functional equivalence to have the juncture in Trutwin slope as in Baum because Trutwin discloses

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that the invention is not limited to the details of construction and arrangement of components and is capable of other embodiments (Col. 2, lines 40-45) and the slope junction would perform equally as well as the junction disclosed in Trutwin.

Claim 2: the base and top portions extend along the wall adjacent the floor.

Claim 3: while the prior art of record does not disclose that the base and top portions have the same length in the elongated direction, it would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have this limitation because it is well known in the art that structures such as these are manufactured the same length for ease of stocking and transport, so one of ordinary skill in the art would not make the base and top portions of different lengths.

Claim 4: while the prior art discloses a generally rectangular horizontal cross section, it does not particularly disclose installing the member where one wall meets an adjacent wall. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to install the member in this manner because it is well known in the art to use trim at wall intersections.

Claim 5: Trutwin in view of Baum discloses the sloped surface is the same (Baum Fig. 2).

Claims 6-8: Trutwin in view of Baum discloses the claimed invention except for the angles of the slope. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have these angles because the prior art of record notes that the invention may be altered and remain within the scope of the invention (Trutwin: Col. 2, lines 40-45; Baum: lines 77-82), and to have the angles as claimed would not depart from the scope of the invention.

Claim 9: the prior art of record discloses the claimed invention except for the thicknesses of the top and bottom portions. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the thicknesses the same as a matter of design choice because Trutwin discloses that while the bottom is thicker than the top (Col. 5, lines 45-50) the invention is not limited to the details of construction and arrangement of components and is capable of other embodiments (Col. 2, lines 40-45) and one can make the top and bottom portions the same thickness if one desired for aesthetic purposes.

Claim 10: Trutwin discloses (as noted in the drawings) that the material is wood, but it does not disclose that the baseboard is made from a single piece of wood so that the grain would match. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to use a single piece of wood in order to preserve timber and also for aesthetic purposes.

Claim 11: the base portion has a recess (Trutwin: formed by 25, 29, 33) where the back surface meets the upper end.

Claim 13: the prior art of record discloses the claimed invention except for the method of forming the baseboard. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to form the baseboard by providing a board with a front and back surface and cutting the board lengthwise at a non-perpendicular angle to form the top and bottom surfaces because Trutwin in view of Baum can be made in such a manner (Trutwin: Col. 2, lines 40-45) and one of ordinary skill in the art would form the baseboard as claimed.

Claim 16: Trutwin discloses a baseboard assembly installed in a junction of a wall and a floor (Col. 5, lines 35-45) that has a base portion (17) having back and front surfaces (21, 20, respectively), lower and upper ends (19, 26 respectively), the base portion has the back against the wall and lower end

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adjacent the floor, the lower end of the base portion is flat and perpendicular to the back surface, a top portion (11) having back and front surfaces (15, 14 respectively) lower and upper ends (13, 11 respectively), the back surface is adjacent the wall. While Trutwin discloses that the juncture between the top and bottom portions have a general direction from the higher point to a lower point from the front to back surfaces (e.g. from portion 26 to portion 25), it does not disclose that the juncture is a slope from the front surface to the back surface. Baum discloses a baseboard (Fig. 2) that has a juncture (6) that slopes from the front surface to the back surface. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of functional equivalence to have the juncture in Trutwin slope as in Baum because Trutwin discloses that the invention is not limited to the details of construction and arrangement of components and is capable of other embodiments (Col. 2, lines 40-45) and the slope junction would perform equally as well as the junction disclosed in Trutwin.

Claim 17: Trutwin discloses a baseboard assembly installed where a wall meets a floor (Col. 5, lines 35-45) having a base portion (17) having back and front surfaces (21, 20, respectively), lower and upper ends (19, 26 respectively), the

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base portion is installed in the junction with the back surface against the wall and lower end adjacent the floor, the lower end of the base portion is flat and perpendicular to the back surface, and a top portion (11) having back and front surfaces (15, 14 respectively), lower and upper ends (13, 12 respectively) the back surface is adjacent the wall. While Trutwin discloses that the juncture between the top and bottom portions have a general direction from the higher point to a lower point from the front to back surfaces (e.g. from portion 26 to portion 25), it does not disclose that the juncture is a slope from the front surface to the back surface. Baum discloses a baseboard (Fig. 2) that has a juncture (6) that slopes from the front surface to the back surface. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of functional equivalence to have the juncture in Trutwin slope as in Baum because Trutwin discloses that the invention is not limited to the details of construction and arrangement of components and is capable of other embodiments (Col. 2, lines 40-45) and the slope junction would perform equally as well as the junction disclosed in Trutwin.

Claim 18: Trutwin in view of Baum discloses providing the baseboard assembly as claimed, the base is installed where the

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back is against the wall and lower end adjacent the floor (Trutwin: Col. 5, lines 35-45), and installing the top portion (11) above the base portion with the back surface against the wall and the lower end engages the upper end of the base.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Trutwin in view of Baum as applied to claim s above, and further in view of Pinto (U.S. Patent No. 6,189,276).

Claim 12: the prior art of record discloses the claimed invention except where the top portion has a recess formed where the back surface meets the lower end. Pinto discloses a baseboard with a top and bottom portion (Fig. 6) and a recess in the top portion. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to place a cavity in the top portion of the board in Trutwin in view of Baum in order to allow for the installation of cables and Trutwin notes that other embodiments are available (Col. 2, lines 4-45), and this limitation would be within the ordinary level of skill in the art without departing from the scope of the prior art of record.

Response to Arguments

2. The following addresses applicant's remarks/arguments dated 25 March 2008:

35 USC §112 Rejections:

Applicant's amendment to Claim 18 overcomes the rejection and it is withdrawn.

35 USC §103 Rejections:

Applicant's arguments filed 25 March 2008 have been fully considered but they are not persuasive.

The examiner respectfully noted applicant's remark that the prior art of record (Trutwin: cited above) solves a different problem than applicant's invention. Please note, however that the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

The examiner respectfully disagrees with applicant's position that the combination of the Trutwin and Baum references (cited above) is not a mere substitution and that the results

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would not be predictable. See Figure 2 from Trutwin and Figure 2 from Baum below.

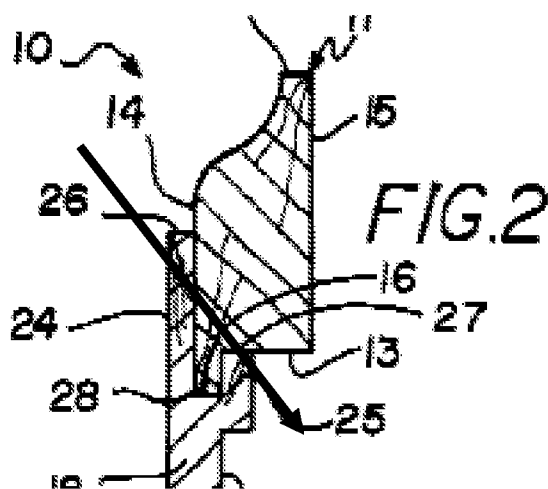


Figure 2 from Trutwin

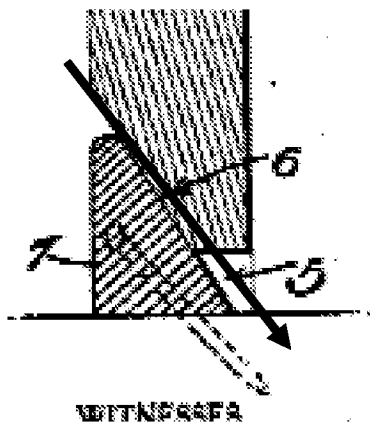


Figure 2 from Baum

In observation of the drawings above with the directional arrows, one can see that the general direction of the joint is from a relatively higher position on the front surface (e.g. Baum: 7) to a relatively lower position at the rear surface (portion proximate the wall.) The examiner takes the position that the joint in Baum (Fig 2: proximate 6) is structurally similar as the joint in Trutwin (Fig. 2: proximate 16) and the function is the same, which is to provide a mating connection for two separate pieces of material. In this instance, it is a two-piece baseboard member. The result, therefore, is predictable in that if one modified the baseboard in Trutwin with the joint in Baum, the result would be a two-piece baseboard that would maintain its connection, the joint would provide the same level of contact surface between the upper and lower members, and this type of joint, though altering, would not destroy the Trutwin reference.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Crowley: U.S. Patent No. 6,751,915: in particular Fig. 2.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. V. G./
Examiner, Art Unit 3635
/Basil Katcheves/
Primary Examiner, Art Unit 3635